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December 21, 2001

No. 2001/095

TO COUNTY ASSESSORS:

REVENUE AND TAXATION CODE SECTION 63.1:
SIGNATURE REQUIREMENTS

The Governor signed Senate Bill 1184 (Chapter 613, Statutes of 2001) which, in part, amends section 63.1 of the Revenue and Taxation Code¹ relating to the parent-child exclusion. Specifically, Chapter 613 amends the signature requirements for claiming the exclusion. These changes will become effective on January 1, 2002.

This letter supersedes Letter To Assessors No. 91/23 (dated March 29, 1991) and Question 8 of Letter To Assessors No. 98/23 (dated April 22, 1998).

HISTORY

Proposition 58, approved by the voters on November 4, 1986, added subdivision (h) to section 2 of article XIII A of the California Constitution. Subdivision (h) provides, in part, that the terms "purchased" and "change in ownership" shall not include the purchase or transfer between parents and their children of either a principal residence or the first \$1 million of the full cash value of all other real property. Proposition 193, approved on March 26, 1996, amended subdivision (h) to extend the exclusion to transfers of real property from grandparents to grandchildren under limited circumstances.

Revenue and Taxation Code section 63.1 provides the statutory implementation of Propositions 58 and 193. Among the requirements of section 63.1 is that a claim be filed with the county assessor before the exclusion can be granted. Existing law requires that all the transferors and all the transferees (or their legal representative or the executor or administrator of the transferor's or transferee's estate) sign the claim form. If the transferor refuses to sign or does not have an executor or a legal representative, then the assessor is unable to grant the exclusion. On the other hand, if a mother left property to her four children, for example, and three children signed the claim form, their 75 percent interest could be granted the exclusion. However, the 25 percent interest of the one child who did not provide written certification of their relationship cannot be excluded from change in ownership.

¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

CHANGES TO THE SIGNATURE REQUIREMENT IN EFFECT JANUARY 1, 2002

Chapter 613 amends section 63.1(d) to eliminate the requirement for the transferor to sign the claim form. Instead, the transferee must attest that the transferor is his/her parent, child, or grandparent. Additionally, if there are multiple transferees, only one of the transferees needs to sign the claim form. That transferee must declare under penalty of perjury that all of the transferees are eligible transferees for purposes of this exclusion.

These changes become effective January 1, 2002, and apply to claims filed after January 1, 2002, regardless of the transfer date. If any claims are pending at the time this change in the law occurs, we recommend that transferees, who have not previously met the signature requirements for the claim form submitted, file a new claim form.

RELATED ISSUES

Legal Representative. A legal representative is a person who has been duly authorized and has been given appropriate power ("power of attorney") to file this type of claim. Attorneys, in general, do not have authorization to sign on behalf of their clients. Attorneys can sign only if they have been given the appropriate power to do so. For example, a mother's attorney (her legal representative) does not have power to sign on behalf of the mother's child unless the child expressly gives the legal representative power to sign on the child's behalf.

Limitation on Base Year Value Transfers by Persons Over Age 55 and Disabled Persons (Propositions 60/90/110). Where parents sell their home to their child with the intention of transferring the base year value to a replacement dwelling under section 69.5, the parents will not be able to transfer the base year value if the child files a claim for the parent-child exclusion prior to the parents filing a claim to transfer the base year value. This is because section 69.5 generally requires that the sold property be reappraised at current market value as of the date of sale. An exception to this requirement occurs where the buyer transfers a base year value under sections 69, 69.3, or 69.5. Section 63.1 is not an exception to this requirement; accordingly, if the child retains the base year value, that value cannot be transferred to another home. Under these circumstances, the only way for the parents to transfer the base year value to a replacement home under section 69.5 is to have the child rescind the parent-child claim.

An assessor may allow a claimant to rescind a parent-child or grandparent-grandchild claim even though there is no express statutory authorization. Under basic principles of tax law, the taxpayer has the right to elect whether to claim a tax benefit or not, and if the benefit is voluntary, the taxpayer is not forced to take it. If the taxpayer chooses initially whether to accept the benefit or not, then it follows logically that the taxpayer should be able to withdraw his/her acceptance of the benefit as well, particularly if it results in an increase in tax rather than the reduction (benefit) intended by the Legislature.

\$1 Million Limit. The parent-child exclusion is limited to the first \$1 million of real property, other than principal residences, transferred between an eligible transferor and an eligible transferee. The \$1 million exclusion applies only to the first \$1 million of the full cash value of "other real property" *for which a claim has been filed and the exclusion granted*. However, if parent-child claims are filed for multiple properties whose full cash values cumulatively exceed the \$1 million limit, then the *transfer date* becomes the determining factor for which properties

will receive the property tax exclusion—properties shall be excluded in the order transferred, up to the \$1 million limit. If the transfer date is the same for multiple properties, the transferees must decide which properties will be excluded. The date the claim is filed with the assessor is not a determining factor.

For example, assume a parent transfers four properties to two children in 1993, 1994, 1995, and 1996. The factored base year values of the properties total \$600,000. There are no principal residences involved. Claims are properly filed and exclusions from change in ownership granted. Upon the parent's death in 2001, six additional properties transfer to the two children. Again, no principal residences are involved. The factored base year values of the six properties total \$650,000. Claims are filed for the six additional properties. The two children must decide which of the six properties transferred on the date of death will receive the remaining \$400,000 of the exclusion.

Protective Claims. Situations may occur where the filing requirements necessitate that the claim be filed before all the information required by subdivision (d) is known. This may occur, for example, where an executor has discretion in distributing the real estate holdings of an estate or where an estate will be subject to prolonged administration. In situations where all of the details have not been determined, the parties should file a protective claim with as much information as possible. Staff's opinion is that a court would not deny the section 63.1 exclusion where a reasonable effort was made to provide as much information as possible when the claim was filed. Thus, there may be exceptional cases where the assessor will need to use discretion in determining whether a valid claim has been filed timely.

Claim Forms. Section 63.1, subdivision (e) requires that the State Board of Equalization prescribe the form for claiming the exclusion. The claim forms (BOE-58-AH and BOE-58-G) were updated to reflect the changes in the filing requirements. The forms were mailed to you in Letter To Assessors 2001/083 (November 26, 2001). The Board has not prescribed a form to rescind a claim. If a taxpayer wishes to rescind a claim, the taxpayer should send a written request to the assessor.

CONCLUSION

Enclosed is a copy of section 63.1, subdivision (d) with the changes denoted by strikeout/underline. If you have any questions regarding the parent-child or grandparent-grandchild exclusion, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property Taxes Department

DJG:grs
Enclosure

CHAPTER 613, STATUTES OF 2001

Section 63.1, subdivision (d) of the Revenue and Taxation Code is amended to read:

63.1. (d) (1) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate files a claim with the assessor for the exclusion sought and furnishes to the assessor each of the following:

(A) A written certification by the transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate, signed and made under penalty of perjury that the transferee is a grandparent, parent, child, or grandchild of the transferor and that the transferor is his or her parent, child, or grandparent. In the case of a grandparent-grandchild transfer, the written certification shall also include a certification that all the parents of the grandchild or grandchildren who qualify as children of the grandparents were deceased as of the date of the purchase or transfer and that the grandchild or grandchildren did or did not receive a principal residence excludable under paragraph (1) of subdivision (a) from the deceased parents, and that the grandchild or grandchildren did or did not receive real property other than a principal residence excludable under paragraph (2) of subdivision (a) from the deceased parents. The claimant shall provide legal substantiation of any matter certified pursuant to this subparagraph at the request of the county assessor.

~~(B) A copy of a written certification by the transferor, the transferor's legal representative, or the executor or administrator of the transferor's estate made under penalty of perjury that the transferor is a grandparent, parent, or child of the transferee. The~~ A written certification shall also include either or both of the following:

(i) If the purchase or transfer of real property includes the purchase or transfer of residential real property, a certification that the residential real property is or is not the transferor's principal residence.

(ii) If the purchase or transfer of real property includes the purchase or transfer of real property other than the transferor's principal residence, a certification that other real property of the transferor that is subject to this section has or has not been previously sold or transferred to an eligible transferee, the total amount of full cash value, as defined in subdivision (c), of any real property subject to this section that has been previously sold or transferred by that transferor to eligible transferees, the location of that real property, the social security number of each eligible transferor, and the names of the eligible transferees of that property.

(C) If there are multiple transferees, the certification and signature may be made by any one of the transferees, if both of the following conditions are met:

(i) The transferee has actual knowledge that, and the certification signed by the transferee states that, all of the transferees are eligible transferees within the meaning of this section.

(ii) The certification is signed by the transferee as a true statement made under penalty of perjury.

(2) If the full cash value of the real property purchased by or transferred to the transferee exceeds the permissible exclusion of the transferor or the combined permissible exclusion of the transferors, in the case of a purchase or transfer from two or more joint transferors, taking into account any previous purchases by or transfers to an eligible transferee from the same transferor or transferors, the transferee shall specify in his or her claim the amount and the allocation of the exclusion he or she is seeking. Within any appraisal unit, as determined in accordance with subdivision (d) of Section 51 by the assessor of the county in which the real property is located, the exclusion shall be applied only on a pro rata basis, however, and shall not be applied to a selected portion or portions of the appraisal unit.